STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 21, 2000
v	No. 203697 Recorder's Court
GREGORY JOHN KNOX, Defendant-Appellant.	LC No. 94-008599

Before: Kelly, P.J., and White and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for two counts of fraudulently obtaining controlled substances, MCL 333.7407(1)(c); MSA 14.15(7407)(1)(c), and two counts of knowing presentation of a false claim, MCL 752.1003(3); MSA 28.547(103)(3). Defendant was sentenced to one year of probation. We affirm.

The prosecution alleged that defendant telephoned a prescription for Vicodin to his pharmacy on March 28, 1994, and altered a prescription from April 20, 1994, which authorized a refill. The prosecution further alleged that defendant had the pharmacist bill Blue Cross for the prescription.

Defendant, who was a Garden City police officer, theorized that the case was not about the prescriptions, but, rather, events arising from a shooting incident. During an internal investigation, defendant allegedly made *Garrity*[1] statements that could have exposed the deputy chief and the city to civil liability. Defendant claimed that, as a result of his refusal to change his account of the shooting, the Garden City Police Department was out to get him. He also testified that personnel at the respctive doctors' offices had phoned in the prescription or made the alteration, and that he had paid for the prescriptions with cash. Several witness testified in support of each theory.

Defendant's sole issue on appeal is that the trial court's failure to instruct, sua sponte, the jury on voluntary intoxication was reversible error. Defendant failed to request such an instruction and failed to object to the instructions given. Therefore, this issue is unpreserved. *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996). In order to avoid forfeiture of this issue, defendant must demonstrate plain error that was prejudicial, i.e., that could have affected the outcome of the trial.

People v Carines, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994). Because defendant did not request an instruction on the voluntary intoxication defense, reversal may be granted only if a miscarriage of justice would otherwise result. *People v Messenger*, 221 Mich App 171, 177; 561 NW2d 463 (1997).

"Voluntary intoxication is a defense only to a specific intent crime." *People v Maleski*, 220 Mich App 518, 521; 560 NW2d 71 (1996). "A defense of intoxication is only proper if the facts of the case could allow the jury to conclude that the defendant's intoxication was so great that the defendant was unable to form the necessary intent." *People v Mills*, 450 Mich 61, 82; 537 NW2d 909, mod 450 Mich 121 (1995); *People v Gomez*, 229 Mich App 329, 332; 581 NW2d 289 (1998). Where the trial court's omission of the intoxication instruction was not erroneous, there is no manifest injustice. *Id.* at 334.

Defendant argues that both crimes for which he was convicted require a showing of specific intent. We agree.

> Specific intent is a nebulous concept but has been defined as the subjective desire or knowledge that the prohibited result will occur. *People v Spry*, 74 Mich App 584, 596; 254 NW2d 782, lv den 401 Mich 825 (1977). To determine if a criminal statute requires specific intent, we look to the mental state set forth in the statute. *People v Lerma*, 66 Mich App 566, 569; 239 NW2d 424, lv den 396 Mich 848 (1976). Where a statute requires that the criminal act be committed either "purposefully" or "knowingly" then the crime is a specific intent crime. *Id.* [*People v American Medical Centers of Michigan, Ltd*, 118 Mich App 135, 324 NW2d 782 (1982).]

Even though both statutes under which defendant was convicted require a showing that he acted knowingly, the intoxication defense was not proper in this case because the facts presented at trial would not allow the jury to conclude that defendant was unable to form the requisite intent due to intoxication. While the prosecution introduced evidence that defendant had a substance abuse problem, none of the testimony showed that defendant was intoxicated during the commission of the crimes. The trial court's failure to instruct, sua sponte, on the voluntary intoxication defense was not plainly erroneous. Defendant has not established that he suffered a manifest injustice.

Affirmed.

/s/ Michael J. Kelly
/s/ Helene N. White
/s/ Kurtis T. Wilder

[1] *Garrity v New Jersey*, 385 US 493; 87 S Ct 616; 87 L Ed 2d 562 (1967).